

BOARD OF APPEALS
for
MONTGOMERY COUNTY

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Case No. S-2504

PETITION OF MARRIOTT SENIOR LIVING SERVICES, INC.

OPINION OF THE BOARD
(Hearing held April 24, 2002)
(Effective date of Opinion: July 1, 2002)

Case No. S-2504 is a petition pursuant to Section 59-G-2.35 of the Zoning Ordinance (Chapter 59, Montgomery County Code 1994, as amended) for a special exception to construct housing and related facilities for the elderly or handicapped persons at the northwest corner of Burdette Road and River Road, Bethesda, Maryland.

Decision of the Board: Special exception **GRANTED**, subject to conditions enumerated below.

The Board of Appeals held a public hearing on Wednesday, April 24, 2002, pursuant to Section 59-A-4.11(a) of the Zoning Ordinance.

Timothy Dugan, Esq. appeared on behalf of the Petitioner, Marriott Senior Living Services, Inc. He called as witnesses: John Becker, Architect, Anne Golightly, General Manager Maplewood Park Place, Edward Papazian, Transportation Planner, Susan Brecht, Market Need Analyst, David Lennhoff, Real Estate Appraiser, Kim McCary, Engineer, Frank Bossong, Engineer, Mark Gionet, Landscape Architect, Chris Cowles, Arborist, and Philip Perrine, Land Planner.

The Board called three witnesses from the Maryland-National Capital Park and Planning Commission ("M-NCPPC"): William Landfair, Shahriar Etemadi, and Sally Roman.

Katherine Jones, Betty Miller, and Constantinos Vasiliades testified as individuals in opposition to the petition.

Max Zweig, for the Bradley Boulevard Citizens Association, testified that the Association neither supports nor opposes the proposed project.

Martin Klauber, Esq., the People's Counsel of Montgomery County, also participated in the proceedings. Mr. Klauber recommended that the Board approve this requested special exception, subject to the conditions enumerated below.

EVIDENCE PRESENTED TO THE BOARD:

1. The subject property (the "Property") is located at the northwest corner of Burdette Road and River Road, Bethesda, Maryland. The Property is currently owned by Helpful Acres, Inc., a wholly owned subsidiary of Burning Tree Country Club, Inc. ("Burning Tree"). Burning Tree has entered into a contract with Marriott Senior Living Services, Inc. (Exhibit 18) under which the Property will be purchased for the purpose of developing a continuing care retirement community. The site consists of 16.8 acres of R-200 zoned land. Access to the Property will be provided from Burdette Road, a public street, approximately 300 feet from its intersection with River Road. The Property has approximately 650 feet of frontage along Burdette Road and approximately 390 feet along River Road. The Property abuts a ramp leading to the Capital Beltway (I-495), and the Beltway itself. The Property is currently undeveloped and is heavily wooded; and slopes down approximately sixty feet from its northeasterly boundary corner to its southwesterly boundary corner. There are no streams, wetlands or floodplains on the site (Exhibit 30).

2. The surrounding neighborhood is predominantly residential in character with single-family homes in the R-200 Zone. The Neighborhood contains a number of institutional special exception uses including Burning Tree Country Club, Holton Arms School, Burning Tree Elementary School, Bradley Hills Local Park, Burning Tree Local Park, Primary Day School, and the American Plant Food retail nursery. Adjoining the subject property to the north is the Burning Tree Country Club. Confronting to the east, across Burdette Road, are three single-family homes in the R-200 Zone and American Plant Food. Confronting to the south, across River Road, is the Al Marah community of single-family homes in the R-200 Zone (Exhibit 30).

3. The Petitioner proposes to construct a continuing care retirement community ("Fox Hill"), that will include living accommodations for 240 independent living units, 20 assisted living units, 20 special care units, and 43 skilled nursing beds. The units will be included within a multi-story building, comprised of 4 separate sections and a central core area. The height of the proposed building will not exceed 50 feet on the side facing Burdette Road (Exhibit 26(p)). The proposed building varies in number of stories due to the sloping topography of the Property. Along the Burdette Road side the building will be about three stories. Where the terrain descends toward the Beltway, the number of stories will increase from three stories to five at the westernmost portion, where the wall for an underground parking level will be partially visible (Exhibit Nos. 3 and 26(u)). The building will contain: (a) 72 one bedroom, 144 two bedroom, and 24 three bedroom independent living units; (b) 20 assisted living units; (c) 20 special care units; and (d) 43 skilled nursing beds (Exhibit 26(p)). Independent living units will have a fully equipped kitchen with dishwasher, disposal, self-cleaning oven, microwave, refrigerator with ice-maker and a large capacity washer/dryer. All units will have wall to wall carpeting and window treatments and include hookups for cable television and telephone. The Petitioner proposes to provide a billiard room/game room, library, computer facilities, media/entertainment room, arts center, beauty parlor/barber shop, and nursing medical facilities. Exterior common areas will include outdoor courtyards on the north and south sides of the core, a sidewalk along the driveway encircling the building, and a walking trail (Exhibit 14).

4. Ms. Brecht testified that she estimates current unmet demand for senior housing in the County of 1,221 units and in the Petitioner's primary market area of 665 units. The MNCPPC Research division staff estimates current unmet demand of 1,500 units in the County and that such need will grow by 200 to 250 units per year as the population in this age group increases (Exhibit Nos. 14 and 30).

5. Staff employed at the facility would include personnel for the following functions: management and administration, reception, housekeeping and maintenance, security, sales, food service, recreation and activities, transportation, assisted living, special care, and skilled nursing (Exhibit 14). Ms. Golightly testified that the number of Staff on site is expected to vary during the day, and the Staff are expected to arrive and depart throughout the day, rather than in shifts. A maximum number of 75 Staff are expected to be working on site at any one time (Exhibit 3).

6. The proposed facility will house individuals whose average age will be 75 and older (Exhibit 14).

7. The site is required to provide 379 standard parking spaces. The Petitioner proposes to provide a total of 400 spaces, comprised of 160 surface parking spaces and 240 underground parking spaces (Exhibit 26(p)).

8. A sidewalk will be constructed to connect the development with the Metrobus stop on the north side of River Road. The Petitioner will be installing bus shelters at the two Metrobus stops located on the north and south sides of River Road. Furthermore, the Petitioner proposes to operate a shuttle bus for its residents and employees, which will provide access to a variety of activities and services in the area (Exhibit 30).

9. The site is located in the Bethesda-Chevy Chase planning area and is contained in the 1990 Approved and Adopted Bethesda-Chevy Chase Master Plan ("Master Plan").

10. The M-NCPPC Technical Staff recommended approval of the application based on its opinion that the proposed use comports with the Master Plan and meets the general and specific special exception standards (Exhibit 30).

11. Mr. Perrine testified that the Master Plan, at page 33, recommends that if the proposed site were not to be used for country club use, then it should be used for a residential purpose. He testified that retirement housing is a residential purpose. Mr. Perrine stated that because of the forested perimeter and the type of lighting, the proposed use would not be detrimental to the surrounding neighborhood with respect to lighting glare. Mr. Perrine further stated that the use would not adversely affect the character, health, safety or welfare of the neighborhood.

12. The Technical Staff found that the proposed special exception would have no detrimental effect on adjacent intersections and roads and that the proposed use would generate 26 AM and 36 PM peak hour trips. (Exhibit 30). Mr. Papazian reported the same peak hour trip generation information in his traffic report (Exhibit 12).

13. For Policy Area Transportation Review, the FY 02 Annual Growth Policy indicates that the Bethesda-Chevy Chase Policy Area has adequate housing staging ceiling capacity available, 5,886 housing units

as of March 31, 2002, to accommodate the proposed development (Exhibit 30).

14. Mr. Papazian testified that the Petitioner proposes constructing both an entranceway angled toward River Road and a raised median (about 4 feet wide and about 75 feet long) in Burdette Road. The angled entranceway and the raised median are intended to discourage traffic from entering the site from north of the Property, and exiting the site and traveling northbound on Burdette Road. Mr. Papazian testified that the angled entranceway and raised median will not absolutely prevent a determined individual entering or leaving the site *via* Burdette Road north of the Property. He added that the angled driveway and raised median will significantly reduce the frequency of such occurrences.

15. Burdette Road will be widened to four lanes between the site's entrance and the intersection at River Road, which is a distance of about 300 feet. Two southbound lanes approaching River Road will afford the opportunity for a separate lane for right turns onto River Road. Two northbound lanes will separate the left turning movements into the site from the through movements continuing past the entranceway (Exhibit 30).

16. The Petitioner proposes to install a traffic signal at the intersection of Burdette Road and River Road, for which the Petitioner has obtained a traffic signal warrant from the Maryland State Highway Administration (Exhibit 17). Mr. Papazian stated that the surrounding road network was adequate to accommodate traffic generated from the proposed special exception.

17. With respect to Section 59-G-2.35(a)(1), Mr. Dugan, on behalf of the Petitioner, proffered that the Petitioner would meet the special exception requirement of providing 15 percent of the independent living units, or 36 units, as affordable housing units meeting the definition of very low income. The Petitioner also entered into a fee-in-lieu agreement with the Montgomery County Department of Housing and Community Affairs ("DHCA") whereby the Petitioner would pay a fee, equal to \$21,000 per unit, to the County's Housing Initiatives Fund, in lieu of providing such units on site (Exhibit 26(r)).

18. The following forestation plans have been approved for the property: (a) a Natural Resources Inventory and Forest Stand Delineation (Exhibit 10); and (b) a Preliminary Forest Conservation Plan and worksheet (Exhibit 26(h)) and Exhibit 26(i)). The Petitioner has proposed

to preserve 5.8 acres of forested areas, which meet the definition of “forest” under the Forest Conservation Act.

19. Mr. McCary stated that somewhat less than the entire 5.8 acres of such forest to be preserved would be placed in a Category I Conservation Easement, as shown on the Preliminary Forest Conservation Plan. Mr. McCary testified that based upon the Preliminary Forest Conservation Plan, the site is expected to satisfy the forest conservation laws on site (Exhibit 26(f), and Exhibit 26(g), Special Exception Site Plan; Exhibit 26(h) and Exhibit 26(i), Preliminary Forest Conservation Plan).

20. Mr. Gionet testified that landscaping would be planted along the Property’s perimeter in certain locations to buffer and/or screen views. He stated that the area across Burdette Road from the closest home, currently owned by Mr. and Mrs. David Tell, will have special landscaping to buffer the view that is reflected on the Planting Plan (Exhibit 26(k)) and the Planting Plan Details and Schedule (Exhibit 26(l)).

21. The site is located in the Thomas/Beltway Branch subwatershed of the Cabin John watershed, Use Class 1 (Exhibit 10). The Countywide Stream Protection Strategy assesses the Thomas/Beltway Branch subwatershed as having poor stream conditions and fair habitat conditions, labeling it as an Urban Watershed Management Area. (Exhibit 30).

22. Mr. McCary testified that the Petitioner’s stormwater management concept plan application was approved by the Montgomery County Department of Permitting Services (“DPS”). The Technical Staff also confirmed that such stormwater management concept plan was approved by DPS (Exhibit 30). Mr. McCary testified that the Petitioner’s proposed stormwater management concept plan includes two underground stormwater management facilities. Mr. McCary also testified that the site is located in Categories W-1 and S-1 for public water and sewer respectively, and that the proposed use would not adversely affect the health or safety of the surrounding neighborhood.

23. Mr. Becker testified regarding the following minimum setbacks: (a) the front building setback would be 177.5 feet (required setback is 50 feet) from the property line at Burdette Road; (b) the side yard setback would be 82.4 feet (required setback is 25 feet) from the property line at the Beltway on-ramp; and (c) the rear yard setback would be 234.58 feet (required setback is 30 feet) from the property line at the Beltway.

24. Mr. Becker testified that the service bay will be located at the south side of the building, near the Beltway on-ramp, a significant distance from the closest residences (Exhibit 26(s)).

25. Mr. Becker testified that the building materials would be comprised of synthetic stucco, synthetic wood and synthetic stone to reflect the appearance of materials of the homes in the surrounding neighborhood. Mr. Becker testified that the building would be constructed to a scale and height that would be compatible with the nearby properties (Exhibit 26(u)).

26. Mr. Becker testified that the Petitioner would use construction materials and assemblies designed to reduce interior noise levels. He testified that outdoors, including the courtyard areas, where the wings will encircle three sides, the wings will block or attenuate ambient roadway noise. The Petitioner's acoustic analysis recommends that, consistent with Montgomery County guidelines, traffic noise levels in interior living spaces should not exceed 45 dBA Ldn. With estimated exterior traffic noise levels of only 69 dBA Ldn or less, it estimated that the County's interior noise guideline can be satisfied with the installation of exterior walls rated STC-39 and windows and doors rated STC-28. The report further noted that a proposed water fountain, to be installed at the center of the traffic circle in the west arrival and departure area, will serve to enhance the noise environment by masking the low level of traffic noise (Exhibit 26(q)).

27. Mr. Becker testified that the Petitioner would use a shoebox light fixture affixed to a ten feet tall light pole for its outdoor lighting along the perimeter driveway (Exhibit 8(a), Lighting Fixture). The photometric plan indicates that only 0.1 foot candles would be perceptible at the perimeter of the Property. In the two entranceway courtyards, the Petitioner will install acorn-style lamps with shields that prevent light from shining upward and toward the residents' units (Photometric Plan, Exhibit 26(m)).

28. Mr. Becker testified that one sign would be built into the entranceway retaining wall and another sign would be located near the Property's corner near the intersection of Burdette Road and River Road (Exhibit 26(v)). The lighting illuminating such signs are ground lights and are designed not to exceed 0.1 foot candles (Exhibit Nos. 26(v) and 35).

29. The Property is not recorded by plat of subdivision. The use will require approval of a preliminary plan of subdivision to conform with Chapter 50 of the Montgomery County Code. Mr. McCary testified that the Petitioner filed a preliminary plan application, Preliminary Plan No. 1-02065 (Exhibit Nos. 3 and 30).

30. The Montgomery County Planning Board adopted the Technical Staff's recommended approval of this special exception, subject to conditions (Exhibit 29).

FINDINGS OF THE BOARD:

Based on the Petitioner's binding testimony, the evidence of record and the exhibits presented at the public hearing, the Board concludes that the requested special exception can be granted, as conditioned below.

In reaching this conclusion, the Board reviewed the following sections of the Zoning Ordinance and determined compliance with each section as stated below:

Section 59-G-1.2 Conditions for granting.

59-G-1.21 Standard for evaluation. A special exception must not be granted absent the findings required by the Article. In making these findings, the Board of Appeals . . . must consider the inherent and non-inherent adverse effects of the use on nearby properties and the general neighborhood at the proposed location, irrespective of adverse effects the use might have if established elsewhere in the zone. Inherent adverse effects are the physical and operational characteristics necessarily associated with the particular use, regardless of its physical size or scale of operations. Inherent adverse effects alone are not a sufficient basis for denial of a special exception. Non-inherent adverse effects are physical and operational characteristics not necessarily associated with the particular use, or adverse effects created by unusual characteristics of the site. Non-inherent adverse effects, alone or in conjunction with the inherent effects, are a sufficient basis to deny a special exception.

The Board interprets this section to require the following analysis:

- (1) Make a determination as to the general neighborhood affected by the proposed use.

- (2) Establish those inherent, generic, physical and operational characteristics associated with a given use, in this case housing and related facilities for elderly or handicapped persons, to create an evaluation standard. The evaluation standard does not include the actual physical size and scale of operations of the use proposed.
- (3) Determine separately the physical and operational characteristics of the use proposed, in this case, the use as proposed by the Petitioner.
- (4) Compare the generic characteristics of the evaluation standard with the particular characteristics of the use proposed. Inherent adverse effects are those caused by characteristics of the use proposed consistent with the generic characteristics of the evaluation standard. Non-inherent adverse effects are those caused by characteristics of the use proposed that are not found in the evaluation standard.

Applying the above analysis to this case, the Board finds as follows:

(1) The General Neighborhood.

The Board adopts the neighborhood described by the Technical Staff. The affected neighborhood consists of the properties located within an area bounded by Bradley Boulevard to the north, Burning Tree Road and Booze Creek to the east, Cabin John Parkway to the south, and the Capital Beltway to the west. The surrounding neighborhood is predominantly residential in character with single-family homes in the R-200 Zone. The Neighborhood contains a number of institutional special exception uses including Burning Tree Country Club, Holton Arms School, Burning Tree Elementary School, Bradley Hills Local Park, Burning Tree Local Park, Primary Day School, and the American Plant Food retail nursery. Adjoining the subject property to the north is the Burning Tree Country Club. Confronting to the east, across Burdette Road, are three single-family homes in the R-200 Zone and American Plant Food. Confronting to the south, across River Road, is the Al Marah community of single-family homes in the R-200 Zone (Exhibit 30).

(2) Evaluation Standard – Physical and Operational Characteristics

The inherent, generic, physical and operational characteristics arising from a given special exception use, in this case housing and related facilities for elderly or handicapped persons, must be established to create

an evaluation standard. In previous cases, the Technical Staff has recommended seven criteria to establish these characteristics. These are size, scale, scope, lighting, noise, traffic, and the environment. The Board finds that the primary physical characteristics associated with this type of special exception use are the size, scale and institutional design of the buildings and related facilities. Other physical characteristics include necessary parking to accommodate residents, staff, and guests as well as lighting to ensure safety and security. Operational characteristics include an array of services provided to the residents.

(3) Proposed Use Physical and Operational Characteristics

The physical and operational characteristics of the particular use proposed in this case must be determined. In this instance, the size, scale, and institutional design of the building are consistent with those of the evaluation standard. The Petitioner has mitigated the impact of the proposed building by providing generous setbacks and buffer with substantial portions of the Property remaining forested and additional landscaping and screening provided. The architecture of the building will take advantage of the existing topography to minimize building height and will feature an articulated facade design utilizing materials complementary to the setting. Most of the parking will be located under the building and so will not be visible to nearby properties. The angle of the entrance off Burdette Road, combined with proposed landscaping, will also help to mitigate the view of the building and parking facilities.

The types of services proposed including meal service, medical, and personal care, are consistent with what is commonly found for the use. Proposed exterior lighting will be shielded so as not to impact the neighborhood and lighting from the building will not pose a nuisance given building setback, existing topography, and the amount of buffer to be preserved. The impact of traffic on the neighborhood will be controlled through the design of the entrance and the use of a median on Burdette Road. The proposed traffic signal and pedestrian crosswalks at the intersection with River Road will improve safety and efficiency for motorists and pedestrians. There are no significant environmental issues. Window treatments will attenuate noise associated with the Beltway and River Road. Stormwater management will be provided on site.

(4) Comparison of Characteristics

(1) Inherent Adverse Effects.

After considering the generic characteristics of a facility providing housing and related facilities for elderly and handicapped persons, and comparing them with the proposed physical and operational characteristics of the Petitioner's use, the Board finds that all of the physical and operational characteristics of the proposed use will be inherent adverse effects.

(2) Non-Inherent Adverse Effects.

The Board found no non-inherent adverse effects of the proposed use.

Section 59-G-1.21 General Conditions.

(a) A special exception may be granted when the Board finds from a preponderance of the evidence of record that the proposed use:

(1) Is a permissible special exception in the zone.

The Board finds that the proposed housing and related facilities for the elderly or handicapped persons is allowed in the R-200 Zone, in accordance with Section 59-G-1.21(a)(1) of the Zoning Ordinance.

(2) Complies with the standards and requirements set forth for the use in Division 59-G-2. The fact that a proposed use complies with all specific standards and requirements to grant a special exception does not create a presumption that the use is compatible with nearby properties and, in itself, is not sufficient to require a special exception to be granted.

The Board finds that the proposed application satisfies the standards and requirements for housing and related facilities for the elderly or handicapped persons, as discussed below, in accordance with Section 59-G 1.21(a)(2) of the Zoning Ordinance.

(3) Will be consistent with the general plan for the physical development of the District, including any master plan thereof adopted by the Commission. Any decision to grant or deny a special exception must be consistent with a recommendation in an approved and adopted master plan regarding the appropriateness of a special exception at a particular

location. If the Planning Board or the Board's technical staff in its report on a special exception concludes that the granting of a particular special exception at a particular location would be inconsistent with the land use objectives of the applicable master plan, a decision to grant the special exception must include specific findings as to master plan consistency.

The Board finds that the Property is covered by the 1990 Bethesda Chevy Chase Master Plan. The Master Plan supports the existing R-200 Zone for the Property and the requested housing and related facilities for the elderly or handicapped persons special exception is permitted in this zone, in accordance with Section 59-G-1.21(a)(3) of the Zoning Ordinance.

(4) Will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of any proposed new structures, intensity and character of activity, traffic and parking conditions and number of similar uses.

The Board finds that the proposed development will be in harmony with the general character of the neighborhood considering population density, design, scale, and bulk of the proposed building, intensity and character of activity, traffic and parking conditions, and number of similar uses, in accordance with Section 59-G-1.21(a)(4) of the Zoning Ordinance.

(5) Will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood at the subject site irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed development will not be detrimental to the use, peaceful enjoyment, economic value or development of surrounding properties or the general neighborhood, in accordance with Section 59-G-1.21(a)(5) of the Zoning Ordinance. The Board concludes that the vegetation, consisting of the wooded areas to be preserved around the perimeter, and, in some locations, between the wings of the building, and the proposed additional landscaping, will adequately buffer the views from the surrounding residential neighborhood.

(6) Will cause no objectionable noise, vibrations, fumes, odors, dust, illumination, glare, or physical activity at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed special exception will cause no objectionable noise, vibrations, fumes, odors, dust, glare or physical activity in accordance with Section 59-G-1.21(a)(6) of the Zoning Ordinance.

(7) Will not, when evaluated in conjunction with existing and approved special exceptions in any neighboring one-family residential area, increase the number, intensity, or scope of special exception uses sufficiently to affect the area adversely or alter the predominantly residential nature of the area. Special exception uses that are consistent with the recommendations of a master or sector plan do not alter the nature of an area.

The Board finds that the proposed special exception will not, when evaluated in conjunction with existing and approved special exceptions in the neighboring one-family residential area, increase the number, intensity or scope of special exception uses sufficiently to affect the area adversely or alter its predominantly residential nature, in accordance with Section 59-G 1.21(a)(7) of the Zoning Ordinance.

(8) Will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area at the subject site, irrespective of any adverse effects the use might have if established elsewhere in the zone.

The Board finds that the proposed special exception will not adversely affect the health, safety, security, morals or general welfare of residents, visitors or workers in the area, in accordance with Section 59-G-1.21(a)(8) of the Zoning Ordinance.

(9) Will be served by adequate public services and facilities including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities.

The Board finds that the proposed special exception will be served by adequate public services and facilities, including schools, police and fire protection, water, sanitary sewer, public roads, storm drainage and other public facilities, in accordance with Section 59-G-1.21(a)(9) of the Zoning Ordinance. The Board finds that the sewer and water capacity for the facility is sufficient and finds that the facility will be adequately served by existing public utilities.

(i) If the special exception use requires approval of a preliminary plan of subdivision, the adequacy of public facilities must be determined by the Planning Board at the time of subdivision review. In that case, subdivision approval must be included as a condition of the special exception.

The Board finds that the use requires approval of a preliminary plan of subdivision. Accordingly, the Board will include obtaining such approval among its conditions of approval. The Board also finds that at the time of subdivision, the Planning Board will address the adequacy of public facilities.

(ii) With regard to findings related to public roads, the Board . . . must further determine that the proposal will have no detrimental effect on the safety of vehicular or pedestrian traffic.

The Board finds that the proposed will have no detrimental effect on the safety of vehicular or pedestrian traffic. The Board further finds that the Petitioner's proposed road and streetscape improvements to Burdette Road and River Road, not the least of which is a traffic signal at the intersection of Burdette Road and River Road, will improve the safety of vehicular and pedestrian traffic.

Section 59-G-2.35 Housing and Related Facilities for Elderly or Handicapped Persons

A special exception may be granted for housing and related facilities for the elderly or handicapped persons, subject to the following provisions:

(a) Prerequisites for granting:

(1) A minimum of 15 percent of the dwelling units is permanently reserved for households of very low income, or 20 percent for households of low income, or 30 percent for households of MPDU income. If units are reserved for households of more than one of the specified income levels, the minimum percentage must be determined by agreement with the Department of Housing and Community Affairs in accord with Executive regulations. Income levels are defined as follows:

(A) MPDU income is the income limit determined by the Department of Housing and Community Affairs in the administration of the MPDU program, as prescribed by Chapter 25A of the County Code.

(B) Low Income is income at or below 60 percent of the area median income adjusted for household size.

(C) Very low income is income at or below 50 percent of the area median income adjusted for household size.

(D) Area median income is as determined annually by the U.S. Department of Housing and Urban Development.

The Board finds that the Petitioner is required to provide 36 units, as affordable housing units, for households meeting the definition of very low income.

(2) Taking into account the size of the units, the services to be provided, the income levels to be served, and the location of the site, there is a need for such use because:

(A) There is an insufficient amount of such housing and facilities to serve the existing population of the County, and

(B) The need for such housing and facilities cannot be met by development in accordance with development standards not requiring a special exception.

In making this finding, the Board must consider demographic data, including projections and analyses provided by the Planning Board and County Government, as well as evidence provided by parties to the case. Such data will be evaluated by the technical staff of the Planning Board.

In accordance with Section 59-G-2.35(a)(2), the Board finds that there is a need for the Petitioner's proposed use. The Research Division Staff reviewed the Petitioner's need study (Exhibit 14) and provided its own analysis, which is included as an appendix to the Technical Staff report (Exhibit 30). Both the Petitioner's study and the Staff's study demonstrate the need for additional units in Bethesda. The Board finds that the Petitioner has adequately demonstrated a finding of need for the proposed use.

(2) The proposed use will not produce adverse effects on the use or development of the surrounding area because of noise,

traffic, type of physical activity, height or bulk of buildings, density, or any other reason.

The Board finds that the proposed use will not produce adverse effects because of noise, traffic, type of physical activity, or any other reason. The development is expected to generate only 26 AM and 36 PM peak hour trips.

- (3) *The site or the proposed facility has adequate accessibility to public transportation, medical service, shopping areas, recreational and other community services frequently desired by elderly or handicapped persons.*

The Board finds that the site has adequate accessibility to the nearby shopping areas, recreational, and community facilities.

- (4) *The site of the proposed facility is reasonably well protected from excessive noise, air pollution, and other harmful physical influences.*

The Board finds that the site will be reasonably well protected from excessive noise because the building will be constructed of materials designed to reduce interior noise levels to those permitted by Montgomery County and because exterior noise levels will be at acceptable levels permitted by Montgomery County.

Further, the Board finds that Fox Hill's wooded setting is expected to afford reasonable protection from air pollution and other harmful physical influences.

- (b) *Occupancy of a dwelling unit is restricted to the following:*

(1) *An elderly or handicapped person, as defined in Section 59-A-2.1;*

(2) *The spouse of an elderly or handicapped resident, regardless of age or handicap;*

(3) *A resident care-giver, if needed to assist an elderly or handicapped resident; or*

(4) *In a development designed primarily for handicapped rather than elderly person, the*

parent, daughter, son, sister or brother of a handicapped resident, regardless of age or handicap.

Additional Occupancy Provisions are:

(5) Age restrictions must comply with at least one type of exemption for housing for older persons from the familial status requirements of the federal "Fair Housing Act," Title VIII of the Civil Rights Act of 1968, and subsequent amendments thereto. (In that Act, "familial status" refers to discrimination against families with children.)

(6) Resident staff necessary for operation of the facility are also allowed to live on site.

The Board finds that based on the evidence submitted by the Petitioner, the residents of the proposed use will meet the definition for elderly persons contained in the Zoning Ordinance. The average age of a resident entering Fox Hill is expected to be about 75 years (Exhibit 14).

(c) Development standards, other than density, in residential zones where allowed by special exception, except R-30, R-20, R-10, and R-H:

(1) Minimum net lot area: 1 ½ acres, but not less than the minimum net lot area specified by the relevant zone.

The Board finds that the Petitioner satisfies the requirements of subsection (c)(1), as the site is approximately 16.8 acres and the minimum lot size in the R-200 Zone is only 1.5 acres.

(2) Minimum setbacks:

(A) From street: 50 feet. Except for an access driveway, this must be maintained as green area. However, if development does not exceed the height limit of the applicable one-family zone, the minimum setback specified in the zone applies.

The Board finds that the building will be setback a minimum of 177.51 feet from the front property line at Burdette Road, which exceeds the minimum 50-foot setback, as evidenced by the Site Plan (Exhibit Nos. 26(f) and 26(g)) and the Site Analysis (Exhibit 26(p)).

(B) From side and rear lot lines: 25 feet or as specified by the relevant zone, whichever is greater.

The Board finds that the proposed use meets the setback requirements of this sub-section. In the R-200 Zone, the side and rear lot line setbacks are 25 and 30 feet, respectively. For the proposed use, the building will be setback a minimum of 82.4 feet from the side lot lines. The building will be setback a minimum of 234.58 feet from the rear lot line. The nearest residence will be more than 200 feet from the building's façade.

(3) Maximum building height: 120 feet, provided the following height-to-setback ratio is achieved for heights above the maximum prescribed by the applicable zone:

Rural Cluster, Rural, RE-2, REC, RE-1, R-200, R-150 Zones: One foot of height is allowed for each one foot of setback from the side and rear lot lines, up to a height of 50 feet. Between 50 and 120 feet of height, one additional foot of height is allowed for each additional 2 feet of setback beyond the minimum side and rear yard setbacks prescribed by paragraph (2)(b), above.

The Board finds that the proposed use meets the height requirements of this sub-section. The height for the proposed elderly housing building is to be no greater than 50 feet as measured in accordance with the Zoning Ordinance, although the building will appear taller from other elevations (Exhibit 26(u)). The height limit in the R-200 Zone is 50 feet.

(4) Maximum lot coverage: As specified by the relevant zone, provided the coverage complies with the setback requirements of paragraphs (c)(2) and (3) of this section.

(d) Development standards, other than density, in the R-30, R-20, R-10, and R-H Zones are as specified by the relevant zone in Section 59-C-2.41, except that lot coverage and building setbacks may be

modified as specified in Section 59-C-2.42 concerning standards for moderately priced dwelling units.

The Board finds that the maximum lot coverage in the R-200 Zone is 25%, and the special exception site plan proposes lot coverage of 19.1%.

(e) Maximum density:

(1) In the Rural, Rural Cluster, RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-40, RT.-6, RT.-8, RT.-10, and RT.-12.5 Zones, the number of units is governed by the overall size of the building as determined in accordance with the combined height and setback standards specified by paragraphs (c)(2) and (3) of this section. Minimum unit size is governed by the minimum space and other relevant standards of Chapter 26, "Housing Standards," of the Montgomery County Code, as amended.

The Board finds that, based on the Petitioner's Statement (Exhibit 3), the units will conform to the minimum standards for unit sizes as specified in Chapter 26 of the County Code.

(f) Parking and loading:

(1) Parking must be provided in accordance with the provisions Section 59-E-3.7, "Schedule of Requirements." The Board of Appeals must require adequate scheduling and long-term continuation of any services for which parking credits are granted in accordance with Section 59-E-3.33(b) and may require additional parking for any facilities and services provided in accordance with Paragraph (g)(2) of this section, if they serve nonresident elderly or handicapped persons. When considering the need for additional parking the Board may consider the availability of nearby public or private parking facilities.

The Board finds that the proposed use will require 379 standard spaces based upon 123 one bedroom units and 184 two or more bedroom units. The Petitioner will meet the requirement, as it is providing 400 parking spaces: 160 surface parking spaces and 240 underground parking spaces (Exhibit 26(p)).

(2) Loading areas to serve any facilities, such as kitchens or retail

stores requiring truck deliveries must be screened so as not to be visible from any lot line abutting or confronting land in a one-family residential zone.

The Board finds that the loading area is sited on the westerly end of the southerly façade, approximately 100 feet from the Property's nearest property line, which runs along the Beltway on-ramp (Exhibit 26(f)). The loading area will be a significant distance from the closest residences (Exhibit 26(f)). The planting plan (Exhibit 26(k)) shows landscaping along the perimeter driveway opposite from the access to the proposed loading area. The Board finds that the submitted planting plan addresses screening around the immediate area. Further, such screening and the nearby wooded buffer to be preserved will combine to buffer and screen the view of the special exception from nearby residences.

(g) Additional provisions:

(1) One or more of the following ancillary facilities and services may be included to serve the residents and possible nonresident elderly or handicapped persons. The Board may restrict the availability of such services to nonresidents and specify the manner in which this is publicized.

(A) Provision for on-site meal service;

(B) Medical or therapy facilities or space for mobile medical or therapy services;

(C) Nursing care;

(D) Personal care services;

(E) Day care for elderly or handicapped persons;

(F) On-site facilities for recreation, hobbies or similar activities; or

(G) Transportation to such off-site facilities and services as shopping, religious, community or recreational facilities, or medical services.

The Board finds that the proposed use will satisfy the requirements of the subsection. The Petitioner's Market Analysis (Exhibit 14) states that

the project amenities will include: walk-in medical center, 24-hour emergency response system, general store, café, dining room, full service bank, computer room, club room/game room with billiards table and game tables, piano room for social gatherings, arts center with painting, ceramics, and art projects, library, full service beauty/barber shop, ballroom for movies, dances and special parties, fitness center with a heated pool and whirlpool, underground garage with resident storage units.

(3) The application must contain a vicinity map showing major thoroughfares, public transportation routes and stops, and the location of commercial, medical, and public services within a one mile radius of the proposed facility.

The Board finds that the Petitioner has submitted the required vicinity map (Exhibit 20(c)). The Property abuts the Capital Beltway and River Road. There are two bus stops on either side of River Road near the intersection of Burdette Road and River Road. The Cabin John Volunteer Fire Department is located about one mile from the Property.

(4) Construction is subject to all applicable federal, state, and County licenses or certificates.

The Board finds that because the Petitioner must obtain the required licenses and certificates in order to obtain the issuance of building permits, the proposed development will thereby be subject to all of the applicable federal, state and County licenses or certificates.

Therefore, based on the foregoing, the Board **GRANTS** this special exception subject to the following conditions:

The Petitioner is bound by its testimony and exhibits of record, the testimony of its witnesses and representations of its attorney, to the extent that such evidence and representations are identified in this Opinion. In particular, the Petitioner will construct and operate the proposed facility in accordance with the following conditions:

1. The Petitioner will comply with the requirements of all submitted statements, plans, and statement of operations, including revised exhibits accepted by the Board at its Worksession on June 12, 2002, and listed below as replacing certain exhibits; including but not limited to:

Exhibit No. 3	Statement of Petitioner
Exhibit No. 8(a)	Lighting Fixture for Driveway and Parking Areas
Exhibit No. 12	Traffic Study
Exhibit No. 14	Market Feasibility Study
Exhibit No. 26(f)	Engineer's Site Plan
Exhibit No. 26(g)	Engineer's Site Plan
Exhibit No. 26(h) Conservation Plan	Preliminary Forest
Exhibit No. 26(i) Conservation Plan	Preliminary Forest
Exhibit No. 26(j)	Tree Save Areas Plan
Exhibit No. 36(b) (replacing 26(k))	Planting Plan
Exhibit No. 36(c) (replacing 26(l)) Schedule	Planting Plan, Details and
Exhibit No.36(d) (replacing 26(m))	Photometric Plan and Exterior Lighting Fixtures
Exhibit No. 26(u)	Exterior Elevations
Exhibit No. 26(v)	Sign Elevations
Exhibit No. 36(e) (replacing 26(w))	Signage Plan
Exhibit No. 35	Ground Lighting Fixture for Entranceway Sign and Corner Sign

2. Approval of a Final Forest Conservation Plan by MNCPPC Technical Staff prior to record plat and prior to the release of a sediment and erosion control or building permit, as appropriate, consistent with the Preliminary Forest Conservation Plan, Exhibit 26(h) and Exhibit 26(i).

3. Compliance with Montgomery County Department of Permitting Services requirements for stormwater management and sediment and erosion control.

4. Conformance with Chapter 50 (Subdivision Regulations) of the Montgomery County Code including approval of a preliminary plan of subdivision by the Montgomery County Planning Board.

5. The maximum number of employees on site shall be no more than 75.

6. Scheduled deliveries during weekdays shall occur between 8AM and 6PM. Scheduled deliveries during weekends shall occur on Saturday only between 9AM and 3PM.

7. After opening, at least annually, Petitioner or its assigns, shall convene a neighborhood liaison committee meeting. Representatives from the following organizations shall be invited to be members of the committee:

(i) Petitioner (Fox Hill)

(ii) Bradley Boulevard Citizens Association

(iii) Al Marah/Riverway Neighborhood Association

(iv) Holton Arms School

(iv) American Plant Food

(vi) The People's Counsel of Montgomery County
(*ex-officio*)

8. Landscaping shall be implemented according to the Petitioner's replacement plans listed below that implement the modifications imposed by the Board, and described in the M-NCPCC Technical Staff Report (Exhibit 30, at Page 4).

Exhibit No.36(b) (replacing 26(k))	Planting Plan
Exhibit No.36(c) (replacing 26(l))	Planting Plan, Details and Schedule
Exhibit No. 36(d) (replacing 26(m))	Photometric Plan
Exhibit No.36(e) (replacing 26(w))	Signage Plan

Landscaping shall be planted promptly and properly, at such time as it is reasonable to do so, and when construction conditions allow.

9. The special exception shall not operate until such time as the traffic light at River Road and Burdette Road has been installed.

10. The Petitioner must install the site lighting and the lighting fixtures in accordance with the submitted exhibits:

Exhibit No. 8(a) Fixture	Perimeter Vehicular Lighting
Exhibit No.36(d) (replacing 26(m))	Photometric Plan
Exhibit No. 26(v)	Sign Elevations Plan
Exhibit No. 35	Ground Lighting Fixture

11. Interior noise levels shall be in compliance with the Montgomery County noise ordinance through the use of building materials and assemblies having the appropriate sound transfer coefficients. Exterior walls shall have a rating of STC-39. Exterior windows and doors shall have a rating of STC-28.

On a motion by Allison Ishihara Fultz, seconded by Angelo M. Caputo, and Donna L. Barron, Louise L. Mayer, and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 1st day of July, 2002.

Katherine Freeman
Executive Secretary to the Board

NOTE:

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and any party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

See Section 59-A-4.53 of the Zoning Ordinance regarding the twenty-four month period within which the special exception granted by the Board must be exercised.

See Section 59-A-3.2 of the Zoning Ordinance regarding Use and Occupancy Permit for a Special Exception.